IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Revision No. 18 of 2004

Nagar Palika Prishad Jspur, District Udhamsingh Nagar
Through its Executive Officer.

…Revisionist

Versus

(1) Sooraj Singh, S/o Late Sri Bhoop Singh;
(2) Satya Singh, S/o Late Sri Bhoop Singh;
(3) Anand Singh, S/o Late Sri Bhoop Singh
All resident of Mohalla Patti Chahan Jaspur,
District Udhamsingh Nagar.

…….Respondents.

Hon'ble Prafulla C. Pant, J.

Heard Sri Rajesh Chandola and Sri Sarvesh Agrawal, learned counsel for the revisionist and Sri J.C. Belwal, learned counsel for the respondents.

(2) By means of this revision, under Section 115 of the Code of Civil Procedure, 1908, the revisionist has challenged the finding on issue no. 3, passed by the trail court in Civil Suit No. 48 of 2002.

(3) Brief facts of the case are that plaintiffs (present respondents), filed Suit No. 48 of 2002, before Civil Judge

(Junior Division), Kashipur, District Udhamsingh Nagar, with the pleading that by virture of adverse possession over agricultural land, Khasra No. 111, measuring area 2.94 acres, within the limited of village Jaspur, Patti Mansha, Tehsil Kashipur, belongs to them. On the basis of the above averments, the plaintiffs filed suit for injunction against Nagar Palika Parishad (defendant), before the trial court. A preliminary objection appears to have been raised in the written statement as to the jurisdiction of the Civil Court I the matter, which was formulated as issue no. 3. The Trial court after hearing the parties decided issue no. 3 in negative holding that it has jurisdiction.

(4) Learned counsel for the revisionist argued that, admittedly, the land in question is an agricultural land and plaintiffs are not recorded tenure holders. This fact is not denied by the plaintiffs / respondents that they are not recorded tenure holders. That being so it is a clear case of declaration of title under the garb of injunction, for which Civil Court has no jurisdiction to try the suit. The finding recorded by the Civil Judge (Junior Division), Kashipur, on issue no. 3, in the Suit No. 48 of 2002, that it has jurisdiction, is against the law, as such, liable to be set aside.

(5) Learned counsel for the plaintiffs argued that the case of Nagar Palika that land belongs to it, based on a forged document, as Patti Mansha was never transferred to Nagar Palika Parishad. The said document can be appreciated by the competent court, where the suit is cognizable.

(6) With these observations, this revision is allowed. Findings recorded by the trial court on issue no. 3 is set aside. Issue no. 3

shall stand decided against the plaintiffs. The trial court shall return the plaint to the plaintiffs for presentation before the court.

(Prafulla C. Pant, J.)

Dt. 28.5.2007
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